IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 2058 OF 1996

The Maharashtra State Road
Transport Corporation & anr. .... Petitioner

versus

Ram Arjun Patil ..... Respondent.

Shri G.S.Hegde for the petitioner
Shri K.S.Bapat for the respondent.

CORAM; A.P. DESHPANDE, J.
DATED; 28TH MARCH, 2007

JUDGMENT;

1. This writ petition is filed by MSRTC taking an exception to the order passed by the Industrial court dismissing the revision filed by the petitioner directed against the judgment and order passed by the labour court granting reinstatement with full backwages to the complainant/respondent.

2. The respondent at the relevant time i.e. in the year 1976, was working as a conductor with the petitioner. When the bus was proceeding from Thane to Kalher the bus was intercepted and checked by the checking squad. It was found that the respondent conductor had excess amount of Rs. eight and twenty paise and that tickets were not issued to two of the

passengers. One passenger was not returned the sum of Rs.8.20/- who had paid a sum of Rs.10/-. Based on the said material a departmental enquiry was proceeded against the respondent on the charge of misconduct. One of the passengers, whose statement was recorded at the time of checking the bus, was examined as witness in the enquiry proceedings. But he did not support the petitioner and gave altogether different version than what he had given at the time of checking of the bus. The enquiry officer has disbelieved the deposition of the said passenger by name P.K.Joshi and recorded a finding about the misconduct having been proved against the respondent.

3. The disciplinary authority accepting the report of the enquiry officer dismissed the respondent from service and aggrieved thereby the respondent filed a complaint before the labour court under item I (a), (b), (d), (f) and (g) of Schedule IV of MRTU & PULP Act. The labour court by its judgment and order dated 27-3-1991 has found fault with the report of the enquiry officer by holding that the findings are not based on evidence and that the action taken against the respondent was not in good faith and was in colourable exercise of employer’s right.

4. Having held that no misconduct has been proved,

the labour court has set aside the order of dismissal directing reinstatement of the respondent with full backwages and continuity of service. Legality and validity of the order passed by the labour court was questioned by the petitioner by filing revision before the Industrial court. The Industrial court concurring with the view taken by the labour court has held that misconduct has not been proved and hence did not interfere with the order passed by the labour court. On dismissal of the revision, the present writ petition came to be filed. While issuing Rule, this court did not grant stay to the reinstatement and thus the respondent came to be reinstated in service. The learned counsel Shri Hegde for the petitioner has tried to contend that the statements of other passengers were also recorded and the enquiry officer had accepted the said statements and reached a proper conclusion about the misconduct having been proved. Neither those statements of the passengers are placed on record, nor is the enquiry officer’s report placed on record to indicate the manner in which the statements are considered. In the absence of relevant documents being placed on record, the submission made by the learned counsel cannot be properly appreciated. Even otherwise the two courts below have recorded a concurrent finding on facts about the misconduct, not having been proved and the same does not call for

interference by this court.

5. The learned counsel for the petitioner has strenuously urged that there was no material before the labour court to grant full backwages. It is then contended that the labour court erred in law in holding that as the petitioner has committed an unfair labour practice there is no need to find out as to whether the employee was gainfully employed or otherwise. The learned counsel for the petitioner Mr. Hegde submits that the basis for awarding full backwages is erroneous in as much as in his submission, even if it is found that the petitioner has committed unfair labour practice unless and until the employee demonstrates that he was not gainfully employed, order of backwages ought not to follow. The labour court has not considered the question of grant of backwages in its proper perspective but has proceeded on an incorrect assumption that when an employee is entitled reinstatement, then the employee is not required to prove the fact that he was not gainfully employed. The labour court so also the Industrial court has committed a patent illegality in granting full backwages to the respondent. The period of unemployment in question is about 10 to 11 years. It is difficult to believe that a person would do

nothing for such a long time. It has to be assumed that the respondent must have earned some wages for maintaining the family. Having regard to the totality of the facts and circumstances, I am of the view that the order to the extent of grant of full backwages need to be modified. In my opinion, ends of justice would be met by reducing the backwages from 100% to 50%.

6. In the result, the writ petition is partly allowed. The impugned orders passed by the labour court and the Industrial court stand modified to the extent they relate to grant of full back wages. The order passed by the lower court granting full backwages is modified and instead of full backwages, 50% of the backwages would be paid to the respondent from the date of dismissal till his resinstatement.

7. Rule made absolute in above terms with no order as to costs.

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